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Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

EARL MELDRUM HARDING,

Plaintiff-Appellant,

-vs-

STATE OF UTAH and
SALT LAKE COUNTY,

Defendants.

APPEAL FROM
COURT,
OF UTAH.

RANDALL GAITHER,

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Salt Lake City, Utah,

Attorney for Appellant.

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[illegible]

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Entity	Group	Assets	Liabilities	Equity	Income	Expenses	Net Income	Retained Earnings	Dividends	Other	Total
Entity 1	Group 1	100	50	50	10	5	5	5	0	0	100
Entity 2	Group 2	200	100	100	20	10	10	10	0	0	200
Entity 3	Group 3	300	150	150	30	15	15	15	0	0	300
Entity 4	Group 4	400	200	200	40	20	20	20	0	0	400
Entity 5	Group 5	500	250	250	50	25	25	25	0	0	500
Entity 6	Group 6	600	300	300	60	30	30	30	0	0	600
Entity 7	Group 7	700	350	350	70	35	35	35	0	0	700
Entity 8	Group 8	800	400	400	80	40	40	40	0	0	800
Entity 9	Group 9	900	450	450	90	45	45	45	0	0	900
Entity 10	Group 10	1000	500	500	100	50	50	50	0	0	1000

[illegible]

Appellant, an inmate at the Utah State Prison,

DISPOSITION IN THE LOWER COURT

The court below granted respondents' motion to dismiss the petition with prejudice.

RELIEF SOUGHT ON APPEAL

Respondents seek an order of this Court affirming the judgment of the court below.

STATEMENT OF FACTS

On September 15, 1975, appellant entered a plea of guilty to a charge of manslaughter. This plea was given in exchange for the State's agreement to reduce the charge from second degree murder to manslaughter (R.33). At the time that the plea was entered, the appellant stated that his decision to plead guilty was not influenced by any promise of the possible sentence he would receive (R.33-34,36-37), that he was not induced to plead guilty (R.35), that he was satisfied with the representation he had received from his counsel (R.35-36), and that he was not under the influence of any drug which would interfere with his voluntary decision to enter a plea of guilty (R.32). The court accepted the plea of guilty (R.34). The appellant was subsequently sentenced to an indeterminate term in the Utah State Prison of not less than one nor more than fifteen years (R.43).

Appellant then filed a petition for a writ of habeas corpus wherein he alleged that his plea of guilty was not voluntarily entered, and that he had not received effective assistance of counsel (R.2-4). Respondents moved to dismiss the petition based upon the record of the plea taking (R.21).

A hearing was held on the motion to dismiss, and appellant was permitted to testify in his own behalf. The appellant testified that his decision to plead guilty was not influenced by any promise of leniency in sentencing (T.12), and that he had lied to the court on the date that his plea was taken (T.13). The court refused to believe the appellant's testimony that his plea was coerced (T.16), and granted the motion to dismiss (R.59).

ARGUMENT

THE DECISION OF THE COURT BELOW WAS BASED ON ADEQUATE EVIDENCE AND SHOULD BE AFFIRMED.

The appellant has repeated the arguments made to the court below that his plea of guilty was coerced and that his counsel was ineffective. The appellant has failed to show wherein the court below erred in refusing to believe his self-serving testimony.

The record of the plea taking conclusively demonstrates that the plea was voluntary (R.32-37). The court below was not obliged to believe the testimony presented at the hearing on the motion to dismiss, even though the respondents offered no witnesses. Sullivan

v. Turner, 22 Utah 2d 85, 448 P.2d 907 (1968); State v. Larson, 560 P.2d 335 (Utah 1977); Strong v. Turner, 22 Utah 2d 294, 452 P.2d 323 (1969). The transcript of a plea taking is sufficient evidence to support a finding that the plea was voluntary. Klotz v. Turner, 23 Utah 2d 303, 462 P.2d 705 (1969); Bennett v. Smith, 547 P.2d 696 (Utah 1976); Sullivan v. Turner, supra. The court below resolved the factual question of the voluntariness of the plea against the appellant, and this resolution is based on sufficient evidence. The court's finding affords the appellant no basis for appeal.

CONCLUSION

The lower court's finding that appellant's plea of guilty was voluntary is supported by sufficient evidence and the judgment dismissing appellant's petition should be affirmed.

Respectfully submitted,

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